

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STUART WHEELER,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a Delaware  
corporation,

Defendant.

No. 2:15-cv-00385-TSZ

**DEFENDANT BNSF RAILWAY  
COMPANY'S ANSWER AND  
AFFIRMATIVE DEFENSES**

**JURY DEMAND**

COMES NOW defendant BNSF Railway Company ("BNSF"), by and through its attorneys Montgomery Scarp, PLLC, and for answer and affirmative defenses to plaintiff's Complaint on file herein, admits, denies and alleges as follows:

**I. PARTIES**

1.1. Answering paragraph 1.1 of plaintiff's Complaint, BNSF currently lacks sufficient information to form a belief as to the truth of the matters averred therein, and therefore denies the same.

1.2. Answering paragraph 1.2 of plaintiff's Complaint, BNSF admits that it is a corporation organized and existing under the laws of the State of Delaware.

**II. JURISDICTION AND VENUE**

2.1. Answering paragraph 2.1 of plaintiff's Complaint, BNSF admits that it is not a

1 citizen of Washington State, it is not incorporated in Washington, and does not have its principal  
2 place of business in Washington. BNSF currently lacks sufficient information to form a belief as  
3 to the truth of the remaining matters averred therein, and therefore denies the same.

4 2.2. Answering paragraph 2.2 of plaintiff's Complaint, BNSF admits that to the extent  
5 the Court has subject matter jurisdiction over this matter, venue is proper. BNSF admits that the  
6 incident giving rise to this lawsuit occurred in this judicial district. To the extent that paragraph  
7 2.2 differs from the above, BNSF denies the same.

### 8 **III. FACTS**

9 3.1. Answering paragraph 3.1 of plaintiff's Complaint, admitted.

10 3.2. Answering paragraph 3.2 of plaintiff's Complaint, BNSF admits that a BNSF  
11 vehicle driven by Mr. Hawkins that day was parked in front of the BNSF offices at 2900 Bond  
12 Street.

13 3.3. Answering paragraph 3.3, BNSF admits that Elgin Hawkins was employed by  
14 BNSF and was acting within the scope of his employment at the time of the motorcycle/vehicle  
15 collision giving rise to this lawsuit.

16 3.4. Answering paragraph 3.4 of plaintiff's Complaint, BNSF admits that Mr. Hawkins  
17 backed his vehicle up prior to the motorcycle/vehicle collision giving rise to this lawsuit. BNSF  
18 currently lacks sufficient information to form a belief as to the truth of the remaining matters  
19 averred therein and therefore denies the same.

20 3.5. Answering paragraph 3.5 of plaintiff's Complaint, BNSF admits that plaintiff's  
21 motorcycle collided with the vehicle operated by Mr. Hawkins. BNSF currently lacks sufficient  
22 information to form a belief as to the truth of the remaining matters averred therein and therefore  
23 denies the same.

24 3.6. Answering paragraph 3.6 of plaintiff's Complaint, BNSF admits that plaintiff was  
25 injured as a result of his motorcycle colliding with the vehicle operated by Mr. Hawkins. The  
26 remaining matters averred therein call for a legal conclusion that does not require a response. To  
27

the extent a response may be required, BNSF denies liability for plaintiff's claimed damages.

#### **IV. CAUSE OF ACTION**

4.1. Answering paragraph 4.1 of plaintiff's Complaint, BNSF realleges its responses to paragraphs 1.1-3.6 above.

4.2. Answering paragraph 4.2, denied.

4.3. Answering Paragraph 4.3, denied.

4.4. Answering Paragraph 4.4, BNSF admits that Elgin Hawkins was employed by BNSF and acting within the scope of his employment at the time of the motorcycle/vehicle collision giving rise to this lawsuit; however, the remaining matters averred are denied.

#### **AFFIRMATIVE DEFENSES**

Without admitting any matters previously denied, BNSF alleges the following affirmative defenses:

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. The injuries sustained by plaintiff and resulting damages were caused in whole or in part by plaintiff's own negligence, such that plaintiff's recovery of damages, if any, must be denied or diminished in proportion to plaintiff's own negligence.

3. Plaintiff's damages or injuries, if any, may have been proximately caused by the actions of third-parties, unavoidable consequences, or other acts or omissions beyond the direction, supervision or control of BNSF.

4. Plaintiff is not entitled to any damages for injuries that were sustained by plaintiff that were caused by events other than those alleged in plaintiff's Complaint.

5. Plaintiff is not entitled to damages for any physical conditions from which he suffers to the extent that those conditions preexisted in whole or in part prior to the happening of the incident alleged in the Complaint.

7. All or part of plaintiff's damages, if any, are barred, in whole or in part, to the extent that Plaintiff failed to mitigate his damages, if any.

8. BNSF reserves the right to amend this answer and affirmative defenses to allege additional defenses, counterclaims, and any third-party claims as may be identified in the course of investigation and discovery.

**JURY DEMAND**

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Pursuant to Federal Rule of Civil Procedure 38(b), defendant herein requests a trial by a jury of twelve in the above-referenced matter.

DATED this 22<sup>nd</sup> day of April 2015.

# Montgomery Scarp, PLLC

s/ Bradley Scarp  
s/ Michael Chait  
s/ Elizabeth Findley  
Bradley Scarp, WSBA #21453  
Michael Chait, WSBA #48842  
Elizabeth Findley, WSBA #46990  
[brad@montgomeryscarp.com](mailto:brad@montgomeryscarp.com)  
[mike@montgomeryscarp.com](mailto:mike@montgomeryscarp.com)  
[liz@montgomeryscarp.com](mailto:liz@montgomeryscarp.com)

**CERTIFICATE OF SERVICE**

I am over the age of 18; and not a party to this action. I am the assistant to an attorney with Montgomery Scarp, PLLC, whose address is 1218 Third Avenue, Suite 2500, Seattle, Washington, 98101.

I hereby certify that a true and complete copy of *DEFENDANT BNSF RAILWAY COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES* has been filed with the United States District Court via the ECF system which gives automatic notification to the following interested party:

Michael David Myers  
Myers & Company, PLLC  
1530 Eastlake Avenue East  
Seattle, Washington 98102

I declare under penalty under the laws of the State of Washington that the foregoing information is true and correct.

DATED this 22<sup>nd</sup> day of April, 2015, at Seattle, Washington.

s/Tyler Campbell  
Tyler Campbell, Paralegal